

## **ATTACHMENT B**

### **REMARKS**

By this amendment, Applicants have amended the claims in a manner which further exemplifies that the application is not disclosed nor remotely suggested in the prior art and which now places this application in condition for allowance. In addition, Applicant has pointed out that the only prior art reference cited against the present claims does not disclose or remotely suggest the present invention and that the products embodied by the invention constitute a commercial success which further shows that the Examiner's rejections on the basis of obviousness are improper. Accordingly, in light of the present amendments and arguments, the application has now been placed in condition for allowance for at least the reasons set forth below.

With regard to the amendments, the specification refers to the fact that the substrate is an insert that is designed to be sewn into the inside of a garment (see e.g., page 7, lines 3-9), and that the base material is an absorbent fabric as disclosed, e.g., at page 5, lines 16-20 of the specification. Accordingly, the present amendments do not add any new matter to the application.

As an initial matter, in the Official Action, the Examiner has once again objected to the lack of an Abstract, citing 37 CFR § 1.72(b) and stating that "there is still no abstract in this case, even if there was one in the PCT." See Official Action at Page 3. Such a statement is absurd, and Applicant points out that a National Stage of the PCT is this case, and pursuant to MPEP § 1893.03(e), there already is an Abstract in this case, namely the one filed with the International application. It appears that the

Examiner is simply unaware of (or chooses to ignore) the rules that govern in the present case, namely MPEP § 1893.03(e) which states that

The Office will use the description, claims, **abstract** and drawings as published in the pamphlet for the U.S. national stage examination under **35 U.S.C. 371** . . .

When the international application is published as the pamphlet, the abstract is reproduced on the cover page of the publication, even though it appears on a separate sheet of the international application in accordance with PCT Rule 11.4(a). Thus the requirement of 37 CFR 1.52(b) that the abstract "commence on a separate sheet" does not apply to the copy of the application (pamphlet) communicated to the designated Offices by the International Bureau under PCT Article 20. Accordingly, **it is improper for the examiner of the U.S. national stage application to require the applicant to provide an abstract commencing on a separate sheet if the abstract does not appear on a separate sheet in the pamphlet.** Unless the abstract is properly amended under the U.S. rules during national stage processing, **the abstract that appears on the cover page of the pamphlet will be the abstract published by the USPTO under 35 U.S.C. 122(b) and in any U.S. patent issuing from the application.**

MPEP § 1893.03(e) (emphasis added). This objection is this respectfully traversed, and the Examiner is respectfully requested to review this provision or to consult with his Supervisor before reiterating what is obviously an improper objection.

In the Official Action, the Examiner maintained an objection to the Claims under 35 U.S.C. § 112, first paragraph, on the basis of the enablement requirement. The Examiner appeared to indicate that it was not clear that non-toxic compositions were disclosed in the specification, and the Examiner requested citation to the EPA report showing that pyrethrum was not toxic. In the first instance, it is clear that non-toxic compositions are disclosed in the specification since the Examiner himself concedes that "Examiner reconsideration of this issue, result in withdrawal [sic] of this rejection in consideration of amounts of the specific components limited to being Non-Toxic @ claim 14." See Official Action at page 3 (emphasis added). Accordingly, the

Examiner has conceded that non-toxic compositions are disclosed in the specification, and thus that such compositions are enabled by the specification. Moreover, one skilled in the art would understand that an insect repellant should be used in a non-toxic amount, which is obvious in light of the millions of different types of insect repellants used daily around the world which are adjusted to levels non-toxic to humans. Under these circumstance, the claims are clearly supported in the specification even if the exact wording of the specification was not found therein See All Dental ProdX, LLC and DMG Dental-Material Gesellschaft MBH v. Advantage Dental Products, Inc., 64 USPQ2d 1945 (Fed. Cir. 2002) (specification need not describe the claimed subject matter in exactly the same terms as used in the claims wherein it has indicated to persons skilled in the art that what applicant had invented is what is now claimed).

Even further, one of the main insect repellants used in the present invention, pyrethrum, has been found safe and effective by the EPA in light of the fact that this material has been subject to a 10-year state-of-the-art safety test, and this test showed that "pyrethrum extract has a low order of toxicity and is unlikely to cause skin and eye irritation or sensitization." See attached Declaration, ¶2. Accordingly, as requested by the Examiner, Applicant has shown that pyrethrum has been proven safe and non-toxic.

It is thus apparent that the present specification discloses insect repellants at non-toxic levels, as conceded by the Examiner, and that the present claims are clearly enabled by the present specification. Accordingly, the Examiner's rejection under 35 U.S.C. § 112 is respectfully traversed and should be withdrawn.

Finally, the Examiner maintained a rejection under 35 U.S.C. § 103 on the basis of the very old prior art Page US patent issued in 1881. This rejection, insofar as applied to the claims as amended, is respectfully traversed.

As indicated in the attached Declaration, it is clear that Page neither discloses nor suggests the present invention, namely an insect repellant insert made from an absorbent fabric material which is designed to be sewn inside of a garment so as to maintain the attractiveness and saleability of the garment, and at the same time provide the insect repellent benefits to the wearer. As pointed out in the Declaration, the Page reference only discloses the direct coating of a garment with wax, and not the preparation of an insect repellant insert to be sewn inside a garment and not reduce the attractiveness and saleability of the garment. As would be obvious, the waxy garment of Page would not comprise a saleable item in that it would be extremely unattractive to have a garment containing a waxy and messy coat of paraffin, having a waxy coat on the outside of the garment will result in having pieces of wax fall off as the user is wearing the garment, which is not only unattractive and undesirable, it may also result in harmful paraffin wax falling into one's food or one's eye. The very old cited Page US patent thus has never been the model for a saleable product with good reason – it is totally unattractive and unworkable and as a result would never be purchased by a consumer looking for a garment to wear and provide insect protection at the same time.

Finally, it is further the case that products sold which embody the present invention have been a commercial success with sales up to one million dollars a year (see attached Declaration) and high praise received in the industry (see prior declaration filed in this application on July 22, 2002). Accordingly, there are clearly

substantial secondary considerations present in this case which even further buttress the conclusion that the invention is clearly not obvious in light of the Page reference which does not disclose or suggest the present invention, and which moreover only discloses an unattractive, unsaleable product which for obvious reasons never became commercially useful, in sharp contrast to products covered by the present claims.

Accordingly, the Page patent neither discloses nor remotely suggests the presently claimed invention, and the Examiner's rejections on the basis of this reference, insofar as applied to the claims as amended, is respectfully traversed.

In light of the amendments and arguments as set forth above, Applicants submit that the present application overcomes all prior rejections and has been placed in condition for allowance. Such action is earnestly solicited.

**END REMARKS**